88-1978

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JOSEPH F. SPANIOL, JR.
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IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1988

No. _____

DONALD E. TYLER, M.D.

Petitioner

v.

HARTFORD INSURANCE GROUP, YTURRI, ROSE, BURNHAM, EBERT & BENTZ, ANTHONY YTURRI, CARL BURNHAM, JR., CLIFF S. BENTZ, TERESA J. HUTCHENS, DEBBIE FREEPONS CRAIG, FREDERIC P. ROEHR, KENNETH E, ROBERTS, JAMES C. CARTER, THOMAS L. ROBERTS, EDWIN G. RULAND, DONALD P. SMITH, JR., HOLMES, DeFRANCQ & SCHULTE, P.C., KENNETH E. ROBERTS, P.C., SCHWABE, WILLIAMSON, WYATT, MOORE & ROBERTS, VERGEER, ROEHR & SWEEK, X INSURANCE COMPANY, a fictitious name, XX INSURANCE COMPANY, a fictitious name, Y INSURANCE COMPANY, a fictitious name, YY INSURANCE COMPANY, a fictitious name, Z INSURANCE COMPANY, a fictitious name, and ZZ INSURANCE COMPANY, a fictitious name,

PART II OF APPENDIX A

OF PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF OREGON

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EXHIBITS OF COMPLAINT

EXHIBIT A,

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR MALHEUR COUNTY, DONALD E. TYLER, M.D. v. HARTFORD INSURANCE GROUP, SHERMAN G. FINESILVER, OLIVER SETH, MONROE G. MCKAY, JAMES K. LOGAN, WILLIAM ERICKSEN, DONALD P.SMITH, JR., A.M. KELLY, E.P. VAN CISE, JUDGE TURSI, EDWIN G. RULAND, ALAN L. STERNBERG, HARRY S. SILVERSTEIN, JR., MAC V. DANFORD, PHILIP F. ROAN, HARLAN R. BOCKMAN, DEAN JOHNSON, JEAN J. JACOBUCCI, MARVIN W.FOOTE, ANTHONY F. VOLLACK, STEPHEN D. DAWSON, DEBBIE FREEPONS CRAIG, PETER PRYOR, THOMAS L. ROBERTS, JOHN MOTT, PAUL D. RENNER, JOHN R. RODMAN, FRANK R. KENNEDY, PAUL D.COOPER, DONALD E. LA MORA, SHERMAN AND HOWARD LAW FIRM, MICHAEL A.WILLIAMS, KENNETH B. SIEGEL, ELLEN W.REATH, ROGER F.JOHNSON, ROBERT RUDDY, CARL R. KOSTOL, M.D., ALLAN L. FERRIN, M.D., DAVID E. REID, D.O., AND HOWARD I. BOBBITT, Defendants.

No. 86-06-20969-L AMENDED COMPLAINT (Tort-damage to business and personal injury)

Filed 8:33 A.M. Jul 7, 1986.

Plaintiff submits this AMENDED COMPLAINT prior to responsive pleading.

1.

The plaintiff complains of defendants jointly and severally, and for cause of action alleges:

I. FIRST CLAIM FOR RELIEF: COMMON LAW REMEDY FOR UNLAWFUL AND WRONGFUL INTENTIONAL INTERFERENCE WITH BUSINESS AND PURSUANT TO CONSPIRACY

2.

Acts subject of this complaint occurred in Ontario, Malheur County, Oregon, and in Colorado.

3.

Conspirators include persons acting under color of office of judges of district, appellate, and supreme courts of the State of Colorado, and persons acting under color

of police officers of Brighton, Colorado. They and judges of federal district and appellate courts in Colorado acted under fraudulent color of various Colorado State Statutes.

4.

The defendants herein and each of them are responsible for all of the wrongful acts alleged herein and by reference regardless of who committed them or where they were committed.

5.

Prior to plaintiff's applying for medical staff membership in Brighton Community hospital (BCH) in 1968, the hospital administrator of that hospital illegally invaded the privacy of the plaintiff pursuant to the conspiracy subject of this complaint by special inquiries to various places concerning the single marital status of the plaintiff.

6.

Pursuant to conspiracy subject of this complaint, physicians, nurses, and hospital employees at BCH outrageously tried unsuccessfully to trap the plaintiff and even resorted to jeopardizing lives of patients appearing at the emergency room in order to evoke a display that could be deceitfully used against the plaintiff.

7.

Pursuant to conspiracy subject of this complaint, disciplinary hearings concerning the plaintiff were scheduled in Brighton Community Hospital in 1974 without charges or any justifiable reason, but for the malicious reason of unlawfully damaging the plaintiff irreparably in his practice of medicine and outrageously to intentionally cause him emotional distress.

8.

Exercising his only means of preserving his Constitutionally guaranteed right to notice

of specific charges, which were denied him, the plaintiff did not attend aforementioned hearing, the outcome of which was pre-decided, and in breach of hospital bylaws the plaintiff was outrageously and maliciously removed from emergency room call duty without reason or charges only for the purpose of unlawfully damaging him in his practice of medicine and for insult and to cause him emotional distress when it was expected that he would be removed from it naturally in only 2 months after such service for 6 years, and plaintiff was then by deceitful, outrageously illegal means and purposes denied reappointment to the hospital medical staff pursuant to the conspiracy subject of this complaint.

9.

Pursuant to and knowingly joining the conspiracy in progress, members of the Brighton Municipal Police Department maliciously harassed the plaintiff in his

apartment.

10.

Pursuant to conspiracy herein, the District Attorney for Adams County in Brighton, Colorado, refused to prosecute conspirator Dr. Marks for libel when presented documentary proof of a prima facie case, and conspirators outrageously threatened plaintiff by informing plaintiff that the district attorney assured them that he would prosecute no one in connection with the entire conspiracy.

11.

Because of the aforementioned and other wrongful illegal acts committed against the plaintiff pursuant to the conspiracy subject of this complaint, plaintiff initiated several lawsuits in Colorado designed to enable him to practice medicine and without unlawful interference and to receive compensation for damages. Copies of complaints of pertinent suits are appended

the complaint as EXHIBITS A, B, C, D, and
(without some exhibits of the complaints
nsisting of many pages) and those EXHIBITS
e incorporated herein pursuant to UTCR
010,(9); and acts and claims therein
lleged are incorporated herein by this
eference and damages proximately resulting
herefrom are herein sought. They will be
eferred to herein as cases A,B,C,D, and E,
espectively.

12.

ursuant to conspiracy herein alleged, the
laintiff was falsely maliciously libeled in
is profession by the Brighton Blade, the
ocal newspaper, during trial of lawsuit "A"
eferred to and incorporated herein below,
llegally denying plaintiff a fair trial.

13.

air trial of case A (consolidating two
ases) was further illegally denied the
laintiff by defendant conspirators'
a) unlawful intimidation of witnesses

employed by the defendant hospital,

(b) wrongful suppression of legal evidence,

(c) ex parte deals and collusion between the trial judge, Dean Johnson, and named conspirator Larsen, and

(d) unethical closing argument by conspirator attorney.

14.

Plaintiff was illegally denied fair appeal of case A by outrageous fraudulent misquote of the letter subject of the libel action, and other frauds committed by judges of the Colorado Court of Appeals, defendants herein, in collusion and pursuant to conspiracy and who knew the falseness of their statements and knew that their misapplications of law were false.

15.

Further appeals of case A were deprived the plaintiff by the unlawful, malicious, intentional taking and destruction of trial

exhibits during the appeal process by defendant judges of the Colorado Court of Appeals, such destruction also being ratified as their own. That illegal, unlawful destruction of the personal property of the plaintiff by defendants acting under color of state statutes and offices pursuant to conspiracy subject of this complaint was not a judicial act.

16.

Judge Dean Johnson was assigned to preside over Case B by Judge Jean Jacobucci acting illegally and unethically with defendants Dawson, Renner, and Mott pursuant to conspiracy subject of this complaint.

17.

Pursuant to conspiracy, Judge Dean Johnson issued insulting,damaging, outrageous, oppressive orders (that the Colorado Supreme Court ordered expunged from the record) and Defendant Johnson fraudulently dismissed Case B by summary judgment knowing it was an

illegal act. These malicious, illegal acts proximately caused the plaintiff loss of time and money and other damage as herein alleged.

18.

Vital depositions of conspirator hospital administrator Vowell, conspirator Dr. Marks, and of two other persons, one of which contained proof of illegal telephonic surveillance of the plaintiff by defendants herein in unlawful invasion of privacy of the plaintiff, were unlawfully stolen pursuant to the conspiracy subject of this complaint while in custody of the trial court.

19.

Pursuant to the conspiracy subject of this complaint,

(a) reconstructed aforementioned 4 depositions and 46 other depositions, consisting of over 3000 pages of testimony, valuable property of the plaintiff, were

selectively maliciously, illegally destroyed (while preserving depositions taken by defendants) in the Colorado Court of Appeals, (a taking of property without due process of law, under color of laws of the state of Colorado, pursuant to conspiracy), by defendants herein during the appeal process initiated by plaintiff herein to reverse the unlawful fraudulent dismissal by summary judgment of Case B. Defendant judges of the Colorado Court of Appeals ratified as their own acts the taking and destruction of aforementioned property of plaintiff.

(b) That unlawful taking and destruction of the valuable property of the plaintiff by defendant judges was not a judicial act.

(c) Defendant judges, clerk Mac Danford, and other conspirators outrageously refused to provide plaintiff with his requested details of the destruction by conspirator defendants herein fraudulently falsely

claimed to be due to negligence of third parties, whom they refused to identify, because of nonexistence, or whose acts they ratified as their own, along with other requested details to cover up their criminal and tortious acts and in obstruction of justice.

20.

Pursuant to conspiracy subject of the instant lawsuit herein, communications to the plaintiff in Ontario, Oregon, by defendant Danford and defendant judges of the appeals court concerning destroyed exhibits and depositions were outrageous, oppressive, and even included criminal extortion.

21.

Pursuant to conspiracy herein alleged, defendants Craig, Danford, and judges of the appeals court acted outrageously and illegally to prevent proper legal reconstruction of destroyed depositions so

as to make them legally useless in trial and to thereby encourage, promote, aid and abet perjury and non-appearances of witnesses at trial. Insulting, blatant, outrageous, unlawful acts by defendant Craig, now a resident of Oregon, in such deceitful reconstruction were done in Colorado and in Ontario, Oregon, pursuant to conspiracy.

22.

The aforementioned malicious, illegal destruction of depositions pursuant to the continuing conspiracy subject of this action proximately caused the plaintiff loss of time and money, and other damage herein alleged.

23.

Pursuant to conspiracy, defendant judges in the appeals court fraudulently affirmed dismissal by summary judgment in Case B as to nurse conspirators and conspirators who were prominent citizen members of the board of directors of BCH knowing that such

dismissal was illegal.

24.

Pursuant to conspiracy, Plaintiff was illegally denied fair trial of Case B by (a) subornation of perjury by defendants Mott and Dawson (a member of the Oregon Bar), approved and condoned and ratified by conspirator Judge Marvin Foote, and (b) immoral, illegal appeals to the jury to act against the plaintiff because of his minority religious affiliation by defendant Mott, an agent of defendant Hartford, and (c) appeals to the jury by defendants herein because the plaintiff was not married, (d) suppression of proper legal evidence, and other fraudulent and unlawful acts by defendants herein.

25.

Jury verdict awarding the plaintiff $730,000.00 including punitive damages requiring proof beyond reasonable doubt and interrogatories finding conspiracy in Case B

announced in open court with poll of jury are appended hereto as EXHIBITS L and M of Exhibit D (Case D).

26.

Pursuant to conspiracy, plaintiff was illegally deprived the benefit of trial by jury and aforementioned verdict by

(a) jury tampering,

(b) fraudulent order of mistrial by conspirator trial judge Marvin Foote based upon an unauthenticated verdict form finding in favor of defendants accepted outside of court, a non-judicial act,

(c) orders concerning new trial motions by prejudiced, legally disqualified Judges Jacobucci and DeLaney acting without jurisdiction in collusion and unlawful conspiracy with defendants herein, outrageously and illegally condoned by members of the Colorado Supreme Court by fraud and by unlawful application of evidence outside the record, not presented

in open court, and not subject to examination by the plaintiff,

(d) and orders for new trial by defendant Foote after jurisdiction was exhausted in the trial court.

(e) Judges Delaney, Jacobucci, and Foote knew that they acted without jurisdiction and defendants acting with them, including agents of Defendant Hartford, knew that they acted without jurisdiction, and such acts were pursuant to conspiracy.

27.

Pursuant to conspiracy, plaintiff was illegally deprived appeal of trial of case B by

(a) purposeful, intentional concealment of reporter's notes taken of trial proceedings, outrageous report to plaintiff that aforementioned notes disappeared without explanation for such disappearance, reported move of that reporter out of state, refusal of conspirator trial court administrator to

supply plaintiff with reporter's address, and

(b) illegal changes made pursuant to conspiracy in the remaining partial transcript of proceedings.

28.

Pursuant to conspiracy, trial judge of Case B, Defendant Foote, without withdrawal from the case, illegally made himself unavailable by non-judicial acts for motions and new trial, condoned and approved by defendant William Ericksen, issuing orders denying plaintiff his right to continuing jurisdiction by the same trial judge, proximately causing plaintiff loss of time and money and other damage alleged herein, acting under color of office of Chief Justice of the Colorado Supreme Court without jurisdiction and pursuant to conspiracy. Justice Ericksen and other defendants acting with him in conspiracy knew he lacked jurisdiction.

29.

Pursuant to conspiracy, defendant Judge Harlan Bockman set hearings in Case B, and conducted hearings without jurisdiction, knowing he lacked jurisdiction, and acted as presiding judge in face of challenge of his jurisdiction without producing any order directing him to preside over the case in a court of record.

30.

Acting without jurisdiction, defendant Judge Bockman maliciously and oppressively threatened and continued to threaten to dismiss case B under pretext that plaintiff in Oregon disobeyed orders by not appearing for hearings set to be heard by him (Judge Bockman) in Colorado. Judge Bockman then ordered settlement conference.

31.

Settlement conference conducted by defendant Judge Philip Roan resulted in settlement of Case B as to Marks, Larsen, Vowell, and

Brighton Community Hospital.

32.

with the exception of parties referred to in paragraph 31, David Grayson, M.D., and Orrel Daniel, Attorney, who have settled with the plaintiff, the illegal, unlawful denial of compensation and other remedy for the claims of Cases A,B,C,D,E, and F are incorporated herein against the defendants herein due to the conspiracy subject of this lawsuit.

33.

At aforementioned settlement conference of Case B, defendant Judge Philip Roan stated that he had received communications ex parte from defendants herein including Hartford and its attorneys.

34.

Acting unethically because of conducting settlement conference and without jurisdiction in Case E, which involves the same conspiracy as Case B, Judge Roan, knowing that he lacked jurisdiction, set

hearings to be heard in Colorado on June 15, 1984, of all pending motions in Case E including plaintiff's motion to compel discovery and defendant's motion to dismiss Case E, pursuant to conspiracy herein complained of. Notice of hearing was served plaintiff in Ontario, Oregon.

35.

Without notice to the plaintiff until he reached Colorado from Ontario, Oregon, on June 15, 1984, Philip Roan, acting unethically after conducting aforementioned settlement conference, and without jurisdiction, and pursuant to conspiracy, outrageously, fraudulently dismissed Case E on June 13, 1984, without hearing; and no hearing had in fact been intended or had been scheduled on his docket.

36.

Illegal dismissal of Case E by Judge Roan acting maliciously and without jurisdiction and pursuant to conspiracy proximately

caused the plaintiff special and general damages subject of this complaint.

37.

Needless travel of the plaintiff proximately caused maliciously, oppressively, and outrageously without jurisdiction by Judge Roan by notice of hearings issued to plaintiff in Ontario, Oregon, when hearings were not intended, pursuant to conspiracy proximately caused the plaintiff loss of time and money and other damage as herein alleged.

38.

Pursuant to conspiracy subject of this complaint, plaintiff was illegally denied his right to fair impartial appeal of dismissal of Case E by a continuing closure of courts in Colorado by

(a) the presence of conspirators as judges of the Colorado Appeal and Supreme Courts, and

(b) by unlawful and illegal intimidation of

the Plaintiff in Ontario, Oregon, by abusive, illegal, and oppressive use by defendants herein of the Grievance Committee of the Colorado Supreme Court which pursuant to conspiracy subject of this lawsuit threatened plaintiff in Oregon with disbarment and other embarrassment and loss of valuable rights without reasonable or probable cause from January 6, 1984, until July 18, 1984, and then only after all cases pending involving the plaintiff had been disposed of and plaintiff assured them in telephone conversations from the assigned committee lawyer to the plaintiff in Ontario, Oregon, that no appeal was to be made from the illegal, outrageous dismissal of Case E because of illegal, outrageous closure of the appellate courts to him.

39.

Pursuant to the conspiracy, and acting under color of state statutes, defendants Peter Pryor, Thomas L. Roberts, and Hartford

supplied the Colorado Board of Medical Examiners

(a) deceitful, false information, which they knew was misleading, concerning the plaintiff about a collusive lawsuit brought against plaintiff Tyler by persons acting in conspiracy with Hartford referred to below.

(b) They also maliciously supplied prejudicial information to the Colorado Board of Medical Examiners about lawsuits by Tyler as plaintiff against Hartford due to its conspiratorial contract with the Colorado Medical Society designed to illegally obstruct justice in all medical malpractice cases and cases against hospital and medical society committees and which violated federal antitrust laws, subject of Case D.

40.

The members of the Colorado Board of Medical Examiners, pursuant to conspiracy subject of this complaint, unlawfully and outrageously

intimidated and threatened and continue to intimidate and threaten the plaintiff in his professional practice of medicine as a result of his rightful use of courts and his exercise of First Amendment and Fifth Amendment rights.

41.

Pursuant to conspiracy subject of this complaint, defendant Hartford and other defendants

(a) induced and acted in collusion with Elmer Cook who fraudulently commenced a lawsuit against Tyler, plaintiff herein, fraudulently falsely alleging $250,000.00 damages when defendants knew Cook's damages were not that much, that Tyler had not negligently caused Cook's damage, and when they knew that Tyler's relevant insurance coverage with conspirator Hartford Fire Insurance Company, a member company of the defendant Hartford Insurance Group, was limited to $100,000.00;

(b) and then defendant Hartford, acting in collusion with attorneys it hired, outrageously in breach of contract provided only color of defense and not proper defense of Tyler, plaintiff herein. Conspirators improperly fraudulently conducted defense of the case so that plaintiff herein, defendant in that case, would lose the case which was completely without merit, which conspirators krew, and it was clearly commenced after the statute of limitations had expired.

(c) Plaintiff had fulfilled all conditions precedent concerning his insurance contract with Hartford referred to herein.

(d) Through the aforementioned collusive lawsuit, defendants herein outrageously attempted theft of plaintiff Tyler's money and the lawsuit was outrageously designed and conducted for the unlawful purpose of harassing, embarrassing, and damaging the plaintiff emotionally and with mental suffering to distract and intimidate him and

cause him to not proceed with lawsuits against conspirators insured by Hartford and lawsuits against Hartford and the Colorado Medical Society.

(e) The collusive, conspiratorial lawsuit by Cook and Hartford was outrageously designed and conducted pursuant to conspiracy subject of this complaint to damage the plaintiff in his profession, to cause him emotional distress and mental suffering, and to cause him to lose time and money.

42.

Aforementioned breach by defendant Hartford of plaintiff's insurance contract by instituting a collusive lawsuit, by refusing to provide proper defense, and by outrageous conduct related thereto including communications to the plaintiff in Ontario, Oregon, continued until it was necessary for the plaintiff to insist upon payment for settlement with Cook, on March 6, 1981.

Aforementioned collusive lawsuit caused by conspirators herein proximately caused the plaintiff damage as herein alleged including damage in his profession, loss of time and money, and other damage as herein alleged.

44.

Because Plaintiff Tyler in Case B was suing Drs. Marks and Larsen who were insured by Hartford,

(a) Hartford maliciously conspired with members of a committee of the Colorado Medical Society, subject of Case C, to harass and threaten plaintiff herein,

(b) which they did pursuant to conspiracy, and they requested to examine the private personal records of all patients cared for by plaintiff Tyler in hospitals, without pretext of concern with quality of care, their only jurisdiction, but under pretext to determine if the records were adequate for legal purposes in the hypothetical event

that the plaintiff were sued at a time when there was no reason to believe that he would be sued.

(c) Pursuant to conspiracy, the members of the medical society committee maliciously, illegally, and without hearing recommended to Hartford that plaintiff's professional liability insurance not be renewed under pretext of the reason that he did not respond to their illegal requests.

(d) Hartford then outrageously unlawfully conditioned renewal of plaintiff's group professional liability insurance with Hartford upon Plaintiff Tyler's unethically granting Hartford permission to unethically examine personal medical records of all patients cared for by plaintiff in hospitals, in breach of privacy of all such patients and in breach of their contracts with plaintiff.

(e) The foregoing and other associated extremely outrageous illegal acts including

libel of plaintiff by Hartford pursuant to conspiracy are subject of Case C, EXHIBIT C, claims of which are incorporated herein.

45.

As a proximate result of the foregoing outrageous conduct and outrageous condition for renewal of his insurance, the plaintiff's professional liability insurance with Hartford was not renewed in December, 1977, forcing the plaintiff to terminate his practice of medicine in Colorado and proximately causing him loss of time and money, and other damage as herein alleged.

46.

Case C against Hartford and other co-conspirators, was dismissed by the trial court which was affirmed by the defendant judges of the Colorado Court of Appeals by collusion, conspiracy, and outrageous fraudulent acts including by trial judge Defendant Vollack who

(a) blatantly found and ruled that two

obviously different documents are identical, feigning inability to read,

(b) suppressed evidence by illegal prohibition of discovery as a result of an unethical ex parte hearing with other defendants herein,

(c) fabricated facts,

(d) and fraudulently falsely applied rules and laws; and by defendant appeals court judges who

(d) fraudulently and illegally suppressed evidence in form of depositions of defendants,

(e) used evasive, fraudulent, deceitful affidavits submitted by defendants Hartford, medical society committee members, and through attorney defendants herein, Pryor and Roberts,

(f) condoned, approved, and ratified the outrageous acts of defendant Vollack,

(g) deliberately, fraudulently made false statements of facts including false libel of

the plaintiff in his profession, and

(h) fraudulently applied a statute designed to provide immunity for good faith acts (not intentional torts and conspiracy subject of the complaint) by members of hospital committees. Pursuant to conspiracy and fraud induced by Hartford and its agents, defendants Pryor and Roberts, the defendant appeals court judges fraudulently applied that limited immunity statute to members of a medical society committee, not covered in the act, illegally fraudulently granting them complete immunity for their intentional, illegal, outrageous tortious acts, and pursuant to conspiracy affirmed dismissal.

46.

Case D was commenced against defendant Hartford and other conspirators in the U.S. District Court for the District of Colorado.

47.

Sherman Finesilver acting as judge, after correctly finding the complaint, EXHIBIT D, stated a cause of action, pursuant to the conspiracy subject of this complaint, oppressively and fraudulently ordered the complaint stricken and provided the plaintiff leave to rewrite the complaint requiring inconsistent, contradictory, impossible conditions for any such amended complaint.

48.

Pursuant to conspiracy, and under color of Colorado State Statutes C.R.S., 1973, 13-16-101, 102 and 13-17-101, Sherman Finesilver

(a) threatened to arbitrarily, illegally dismiss Case D and

(b) threatened to illegally award the defendants therein (and herein) attorneys fees; and

(c) he oppressively, illegally ordered the plaintiff to post a "cost" bond, with

fraudulent excuse under color of state statutes of plaintiff's being a non-resident of Colorado in the exorbitant outrageous amount of $48,000.00 without any showing of cause, need, or reason for the outrageous amount with the apparent intent and threat that it would be awarded illegally by his dictatorial fiat to pay defendants' attorney fees.

49.

Pursuant to the conspiracy subject of this complaint, the defendants proximately caused the plaintiff to be a non-resident of Colorado in 1978 and thereafter, proximately causing him to be subject to such illegal threats, abuse, and continuing illegal denial of use of federal and state courts in Colorado.

50.

Plaintiff refused to post $48,000.00 bond, so pursuant to conspiracy subject of this complaint, Judge Finesilver acting under

color of state statutes unlawfully dismissed the case and with prejudice, with fraudulent reason given that plaintiff did not obey his order to post bond, illegally denying the plaintiff in Oregon his right to trial by jury and use of federal courts in the district of Colorado or any other district in a suit involving claims based upon federal statutes with payment of only usual legal fees applicable to other plaintiffs in blatant violation of the Bill of Rights including the 5th and 7th Amendments of the U. S. Constitution.

51.

Review by appeal from aforementioned dismissal was denied by defendant Judges Oliver Seth, Monroe McKay, and James K. Logan of the 10th Circuit Court of Appeals who pursuant to conspiracy affirmed Judge Finesilver's grossly oppressive and obviously illegal orders, fraudulently, knowingly falsely

(a) claiming the dismissal (with prejudice) was due to refusal of plaintiff to comply with an order (nonexistent) to rewrite the complaint, and

(b) they acted fraudulently and illegally under color of state statutes by affirming the order of cost bond in amount of $48,000.00 without reason given for the bond or the amount.

52.

Under color of Colorado State Statutes, that violate the U.S. Constitution, the conspirators illegally closed all courts in Colorado, state and federal, to the plaintiff as to any future use including for this instant case by a continuing threat of requiring exorbitant prohibitive cost bonds threatened to be followed by fraudulent arbitrary dismissals with arbitrary illegal awards of attorney fees to defendants from the posted cost bond.

(a) Aforementioned outrageous acts were

directed to the plaintiff in Oregon.

(b) Aforementioned continuing illegal closure of state and federal courts in Colorado to the plaintiff damages plaintiff in the instant lawsuit because of differences in court procedure in Oregon and Colorado, Oregon statutes and case law are different than Colorado to the disadvantage of the plaintiff, and the plaintiff could conduct discovery and trial more effectively in Colorado if courts there were available to the plaintiff for fair and honest trials and appeals and without illegal fees and threats.

53.

(a) On May 2, 1986, the plaintiff in Ontario, Oregon, mailed by certified mail receipt of which was acknowledged by return cards,letters with the same content each to defendants Carl R. Kostol, M.D., Allan L. Ferrin, M.D., and David E. Reid, D.O. an example of which is appended hereto as

EXHIBIT F and incorporated herein.

(b) Copy of letter written that same date to defendant Howard I. Bobbitt is appended hereto as EXHIBIT G and incorporated herein.

(c) Copies of letters referred to and enclosed in the aforementioned letters are appended hereto as EXHIBITS H and I and incorporated herein.

(d) Letters referred to in (a) and (b) requested information as to the reason for the continuing conspiracy subject of this complaint and specifically for the reasons those persons acted outrageously and by illegal means and for illegal purposes pursuant to that conspiracy to deprive the plaintiff unlawfully the use of his license to practice medicine in Oregon, and continuing subject to their illegal conditions, damages from which are included in this complaint.

54.

Pursuant to the conspiracy subject of this

complaint and causing it to continue and to threaten the plaintiff if he attempts to practice medicine now or in the future, defendants Kostol, Ferrin, Reid, and Bobbitt outrageously refused and continue to refuse to answer any of the questions in the aforementioned letters.

55.

As a proximate result of the foregoing conspiracy and acts committed including by fraud, the defendants and each of them illegally proximately caused plaintiff loss of lawsuits represented by complaints appended hereto and other related lawsuits and benefit of other lawsuits in the past and in the future to which he is entitled and loss of compensatory, punitive, and treble damages to which he was and is entitled.

56.

As a proximate result of the aforementioned acts committed and being committed pursuant

to the continuing conspiracy subject of this complaint, the plaintiff has suffered and continues to suffer past, present, and future loss of right to trial for damages, injunctive relief related to his right to practice medicine and surgery, and other benefits of trial, right to trial by jury, and right to benefits properly awarded or to be awarded by a jury.

57.

The foregoing acts were committed and are being committed by defendants herein with their knowing that the only possible remedy would be through lawsuits initiated by the plaintiff which would increase his damages even though such lawsuits would be justified, with merit, and against which there would be no legitimate defense. Defendants are responsible for acts and inaction of plaintiff in mitigation of damages including his trying to avoid initiation of lawsuits including the instant

case.

58.

As a proximate result of the aforementioned acts, and which were committed pursuant to the continuing conspiracy subject of this complaint to damage the plaintiff's lawful practice of medicine and surgery for illegal purposes and by illegal means, the plaintiff has been irreparably damaged and continues to be damaged in his practice of medicine and surgery and illegally and continues to be unlawfully deprived of his right to practice medicine and surgery without unlawful interference and obstruction.

59.

As a proximate result of the foregoing acts committed by defendants, and pursuant to conspiracy, the defendants and each of them have proximately caused the plaintiff loss of time and money in an amount exceeding $75,000,000,00 and other special damage.

60.

Aforementioned acts, and committed pursuant to conspiracy, have proximately caused the plaintiff severe emotional distress and mental suffering in the amount of $15,000,000.00.

61.

Aforementioned acts of the defendants and each of them have been committed and continue to be committed maliciously, willfully and wantonly, and in reckless disregard of the rights and feelings of the plaintiff, and the plaintiff is entitled to exemplary and punitive damages.

II. SECOND CLAIM FOR RELIEF: EXTREME OUTRAGEOUS CONDUCT, AND PURSUANT TO CONSPIRACY, WHICH INTENTIONALLY INFLICTED AND CAUSED AND CONTINUES TO CAUSE THE PLAINTIFF TO SUFFER SEVERE EMOTIONAL DISTRESS

62.

Paragraphs 1 through 61 are incorporated

herein by this reference.

63.

The aforementioned conduct and each and all of the acts accumulated and together, of each and all of the defendants, committed jointly and separately, and committed and being committed pursuant to a continuing conspiracy, were and are outrageous in the extreme and they were committed and continue to be committed intentionally for the purpose of causing the plaintiff to suffer severe emotional distress.

64.

The aforementioned conduct, acts, and accumulated acts, committed by the defendants and each and all of them and together proximately caused and continue to cause the plaintiff to suffer severe emotional distress, mental suffering, and other damage as alleged herein.

III. THIRD CLAIM FOR RELIEF:

CLAIMS FOR DAMAGES PROVIDED FOR BY 42 U.S.C. s. 1983

65.

Paragraphs 1 through 64 are incorporated herein by this reference.

66.

The aforementioned conspiracy and acts were designed to and did deprive plaintiff, while in the jurisdiction of Colorado, of rights, privileges and immunities secured by the Constitution of the United States of America, under color of statutes, regulations, and customs of the State of Colorado. The aforementioned conspiracy is continuing, and the aforementioned acts committed and threatened to be committed are of continuing nature, and plaintiff continues to be denied the aforementioned rights, privileges, and immunities.

WHEREFORE, plaintiff prays for remedy

and relief from the defendants and judgment jointly and severally as follows:

1. Special damages in the amount of $75,000,000.00,

2. General damages in amount of $15,000,000.00,

3. Costs of suit,

4. Attorneys' fees,

5. Interest,

6. Other appropriate remedy and relief;

AND exemplary damages from each of the defendants as follows:

7. $500,000,000.00 from Hartford Insurance Group, and

8. $1,000,000.00 each from each of the other defendants.

PLAINTIFF DEMANDS A JURY TRIAL OF ALL ISSUES HEREIN By (signed) Donald E. Tyler, M.D., PLAINTIFF pro se, 1092 S. W. 2nd Ave., Ontario, OR 97914 telephone (503)-889-5109

EXHIBIT B

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON DONALD E. TYLER, M.D., Plaintiff, v. HARTFORD INSURANCE GROUP, Sherman G. Finesilver, Oliver Seth, Monroe G. McKay, James K. Logan, William Ericksen, Donald P. Smith, Jr., A.M. Kelly, E.P. Van Cise, Judge Tursi, Edwin G. Ruland, Alan L. Sternberg, Harry S. Silverstein, Jr., Mac V. Danford, Philip F. Roan, Harlan R. Bockman, Dean Johnson, Jean J. Jacobucci, Marvin W. Foote, Anthony F. Vollack, Stephen D. Dawson, Debbie Freepons Craig, Peter Pryor, Thomas L. Roberts, John Mott, Paul D. Renner, John R. Rodman, Frank R. Kennedy, Paul D. Cooper, Donald E. La Mora, Sherman and Howard Law Firm, Michael A. Williams, Kenneth B. Siegel, Ellen W. Reath, Roger F. Johnson, Robert Ruddy, Carl R. Kostol, M.D., Allan L. Ferrin, M.D., David E. Reid, D,.O., and Howard I. Bobbit,

Defendants. Civil No. 86-854-RE (Malheur County Circuit Court No. 86-06-20969-L)

PETITION FOR REMOVAL

TO: The Honorable Judges of the United States District Court for the District of Oregon

COMES NOW CHARLES H. TURNER, United States Attorney, and JUDITH D. KOBBERVIG, Assistant United States Attorney, and move that the above-entitled cause, commenced in the Circuit Court for the State of Oregon for the County of Malheur County, No. 86-06-20969-L, against the defendants Sherman G. Finesilver, Chief Judge, United States District Court for the District of Colorado; Oliver Seth, Monroe G. McKay, and James K. Logan, Judges of the United States Circuit Court for the Tenth Circuit, on June 3, 1986, be removed to this court, and in support thereof state:

(1) The Petitioners are three United States Circuit Court Judges for the Tenth

Circuit and a United States District Court Judge for the District of Colorado and have been duly appointed by the President; are engaged in the performance of Federal functions under authority of law and Executive acts; and are subject to the supervision of the Judicial Conference of the United States. (2) Petitioners were first notified of this suit when a copy of the complaint was delivered to defendant Chief Judge Sherman G. Finesilver on June 12, 1986. Not all federal named defendants have been served nor has the United States Attorney for the District of Oregon. As the defendants are not listed by title, it is not clear if additional federal employees have been named and therefore should be included in this petition. Defendants have not been served in accordance with Rule 4 F.R.Civ.P. and by filing this Petition for Removal do not waive any jurisdictional defects which

will be asserted in a timely manner in accordance with the Federal Rules of Civil Procedure. (3) No bond need accompany this Petition for the reason that petitioners are employees of the United States Government and at all relevant times to this suit these employees were acting within the course and scope of their employment under color of federal law. (4) Petitioners herewith file a copy of the complaint which was received in this office by telefax on July 3, 1986 from the United States Department of Justice. This complaint does not include the lengthy exhibits attached to the complaint. The Malheur County Clerk's Office has been contacted with a request that all documents in the file be forwarded to this office for filing. Those documents will be filed with the Court as soon as they are received in this office.

WHEREFORE, this action now pending in Circuit Court for the State of Oregon, County of Malheur is removed therefrom to this Court for all further proceedings.

Dated this 3rd day of July, 1986.

(signed) JUDITH D. KOBBERVIG

Assistant United States Attorney

EXHIBIT C (page 1, a letter)

United States Attorney, District of Oregon, 312 United States Courthouse, 620 S.W. Main, Portland, Oregon 97203, July 3, 1986 Malheur County Circuit Court, P.O. Box L, Vale, OR 97918

Re: Donald E. Tyler v. Hartford Insurance, et al., 86-06-20969-L

To the Clerk: Enclosed for filing in the above-entitled case is a Notice of Filing of Petition for Removal, Petition for Removal attached thereto. In a telephone conversation with your office today, we were advised that there is no filing charge for this. Please advise us of the

date the Notice is filed by returning the attached copy of this letter with the appropriate information for Your reply I have enclosed a sel-addressed (sic) envelope. Very truly yours, CHARLES H. TURNER United States Attorney (signed) Judith D. Kobbervig Assistant United States Attorney Encls.

FILED ON July 9, 1986

By: (signed-illegible) Certified to be a true and correct copy of the original Pamela J. Barton, Trial Court Clerk By (signed) Evelyn Sword 3-1-87

EXHIBIT C, page 2

IN THE CIRCUIT COURT FOR MALHEUR COUNTY, DONALD E. TYLER, M.D., Plaintiff, v. HARTFORD INSURANCE GROUP, et al.,Defendants. No. 86-06-20969-L NOTICE OF FILING OF PETITION FOR REMOVAL

TO: Clerk of the Circuit Court of the States (sic) of Oregon for Malheur County Donald E.Tyler, M.D.,1092 S.W.2nd Avenue,

Ontario, Oregon 97914 PLEASE TAKE NOTICE that on July 3, 1986, Defendant, United States of America filed in the United States District Court for the District of Oregon, a Petition for Removal of the above-entitled cause from the Circuit Court of the State of Oregon for Malheur County to the United States District Court for the District of Oregon. Copies of the pleadings are attached hereto.

DATED this 3rd day of July, 1986.

CHARLES H. TURNER United States Attorney

(signed) JUDITH D. KOBBERVIG Assistant United States Attorney

Certified to be a true and correct copy of the original Pamela J. Barton, trial court clerk by (illegible) J---Ross ?

EXHIBIT D (Copy of 28 USCS S.1446)

EXHIBIT E (Copy of 28 USCS ss.1447,1449)

EXHIBIT F

UNITED STATES DISTRICT COURT DISTRICT OF OREGON CIVIL MINUTES-GENERAL Case No. 86-

854-RE Date July 21, 1986 Title DONALD TYLER MD v. HARTFORD INS. GROUP et al DOCKET ENTRY Record of order: GRANTING Hartford's motion for ext. of time to file appearance in this case. Appearance shall be filed within 30 days of the date of this minute order. Order setting status conference TUESDAY, SEPTEMBER 2, 1986 9:30 a.m. (in person status conference). PRESENT: HON. JAMES A. REDDEN, JUDGE M. Hartzell Deputy Clerk

EXHIBIT G

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON DONALD E. TYLER, M.D., Plaintiff vs. HARTFORD INSURANCE GROUP, et al., Defendants. Civil No. 86-854-RE

September 2, 1986 Portland, Oregon

TRANSCRIPT OF PROCEEDINGS BEFORE: The Honorable James A. Redden, Judge.

APPEARANCES: For the Plaintiff Donald E. Tyler, M.D., Pro se For the Government:

Ms Judith Kobbervig, Asst. United States Attorney For Defendant Roberts: Mr. Rick Kuhn Court Reporter: Jerry C. Harris

THE CLERK: For the record, this is the time set for status conference in Tyler versus Hartford Insurance Company, et al. Counsel identify yourselves for the record.

MS. KOBBERVIG: Judy Kobbervig for the Government, Your Honor

MR. KUHN: Rick Kuhn for Defendants Smith, Kelly, Ruland, Roan, Bockman, Foote and Vollack.

DR. TYLER: I am Donald Tyler, M.D., plaintiff.

THE COURT: The reason I asked for this status conference is because there are a great number of parties involved in the lawsuit. It is not just complex but certainly is a repetition of previous lawsuits or nearly so. I see most of the parties have opted out but I, nonetheless,

will set a schedule for all motions to dismiss and/or summary judgment motions, a time for responses. I think at this point all the motions have been filed. So the responses by the doctor will be due and then replies will be due, oral arguments will be scheduled. If the case survives the oral argument, at the time of oral argument I will set a schedule which will include the trial date.

MR. TYLER: Excuse me, Your Honor. I have a motion before the Court challenging the Court's jurisdiction. I submitted that motion.

THE COURT: I am treating that as one of the responses to the various motions that have been filed. It will be treated together with

DR. TYLER: I submit that when a motion is before the Court challenging the jurisdiction, that should take precedence.

THE COURT: Do you have any other response

you are going to file? Anything else you are going to file against the motions that have been submitted, or is that to be treated as your response to all motions to dismiss or for summary judgment? I can tell you sir, your chances of winning that are very slim indeed. I haven't researched it yet, but it seems to me clearly I have jurisdiction.

DR. TYLER: Well, Your Honor, it would appear to me when I am challenging the jurisdiction of the Court

THE COURT: Let me resolve that. The motion is denied. Do you wish to file any responses?

DR. TYLER: You have denied the motion? Well, Your Honor, my next course would be to be in the appeals court.

THE COURT: Let me say this Doctor. Do you wish to file responses to the individual motions which have been filed against you? You have every right to do

that or you can rest on your overall motion to dismiss for lack of jurisdiction. I am trying to advise you your chance of succeeding on that at this level or in the Ninth Circuit Court of Appeals are skinny indeed. What I am recommending, I guess to you is that you take advantage of the opportunity to respond to the various motions for summary judgment and/or to dismiss and see whether you prevail on those. I am prepared to submit to you and will in fact submit to you a schedule in that regard. You will have until September 19, 1986 to file your responses to all of the motions to dismiss and summary judgments which have been filed. Replies will be due September 26, 1986. The oral argument will be October 16, 1986. October 16th is a Thursday. oral argument will be at 8:30 a.m. At that time, Doctor, I will listen to any argument you may have on the individual

motions filed against you and on the motion to dismiss, if that's what it is, your motion for my lack of jurisdiction in this case. They will all be ruled upon at the same time.

DR. TYLER: Do I understand you did not deny it at this time?

THE COURT: I have not made a ruling at this time. I have tried to point out to you you need not rely on that motion at this point. You can still respond to all the individual motions just in case you lose the one on jurisdiction. Motions such as that are pretty easy to lose in the Ninth Circuit. It appears to me just glancing at it, there is probably jurisdiction. So what I am trying to tell you is you ought to take advantage of this situation and the federal rules and respond to those motions to dismiss on summary judgment on the grounds other than jurisdiction if

such grounds there be. There is no sense in putting all your eggs in one basket. I will probably on the day of the argument or soon thereafter on all motions before me. Can either of the defendants present tell me or the plaintiff whether or not all motions have been filed? Have all the defendants filed something?

MR. KUHN: Your Honor, Rick Kuhn for Defendant Roberts. I Don't know whether all the parties have been served yet. And I don't know if everyone has appeared. I know there are a number of motions in the file. I haven't gone through those.

THE COURT: Have you served everyone?

DR. TYLER: I don't understand your question, Your Honor.

THE COURT: Have you told all these folks you are suing them: Have you served your complaint on them:

DR. TYLER: On all of the defendants listed, no, Your Honor, I have not.

THE COURT: When do you intend to do that?

DR. TYLER: Your Honor, at the present time I don't know where this case really is. As far as I'm concerned

THE COURT: It is in federal court.

DR. TYLER: As far as I'm concerned, it's never been removed. The United States is not a defendant. It is required in the petition that the defendants file a petition in the state court. That hasn't been done. So I am not going to serve any of these people to appear in the United States Court.

THE COURT: Have all of the people been served in your state court action before it was removed?

DR. TYLER: No, no, Your Honor, they haven't been.

MS KOBBERVIG: For the record, Your Honor, only one of the federal judges who were named was actually served and that was

Judge Finesilver. Three of the circuit judges were never actually served although I moved on behalf of all three for dismissal.

THE COURT: When was it filed in state court; do you remember?

MS. KOBBERVIG: The removal or the action?

THE COURT: The initial action.

MS KOBBERVIG: I do not have it in the removal petition.

MR. KUHN: It looks like sometime in June of '86, Your Honor.

DR. TYLER; Excuse me, the petition was filed July 3rd.

THE COURT: Pardon?

DR. TYLER: The petition was filed July 3rd according to the records here.

MS KOBBERVIG: That is the removal.

THE COURT: The initial action.

DR. TYLER: Oh.

THE COURT: When you filed it in

approximately June of '86, did you attempt to serve all the parties or just filed the action?

DR. TYLER: I did not attempt to serve all the parties.

THE COURT: Is it your intention to serve these people?

DR. TYLER: It was my intention at that time but not at this time.

THE COURT: What did you do in that regard. When you filed your lawsuit in state court, didn't you hire somebody to serve these people or just sort of filed it and waited?

DR. TYLER: Your honor, I don't understand what it is that you wish to understand.

THE COURT: You filed this case in state court; am I correct?

DR. TYLER: Yes, that's correct.

THE COURT: Against numerous defendants?

DR. TYLER: Yes that's correct.

THE COURT: Did you make any attempt or

make any arrangements or take any action at all to have those defendants served at that time for your case in state court?

DR. TYLER: I was in the process, Your Honor. I had served several of them.

THE COURT: Your agents or are you taking any action for any of those others to be served either in state or federal court at all?

DR. TYLER: Your Honor, I'm taking no action to serve any of them as long as the case is in this U.S. District Court if there is any question about where jurisdiction is.

THE COURT: All right. We will be in recess. (recess)

I certify that the foregoing is a true and correct transcript of the record of proceedings in the above-entitled matter. September 4, 1986. (signed) JERRY C. HARRIS Official Court Reporter.

EXHIBIT H

THE CLERK: For the record, this is the time set for status conference in Tyler versus Hartford Insurance Company, et al. Counsel identify yourselves for the record.

MS. KOBBERVIG: Judy Kobbervig for the Government, Your Honor.

MR. KUHN: Rick Kuhn for Defendant Roberts. I thought there would be more people present today.

DR. TYLER: I am Donald Tyler, M.D., plaintiff.

THE COURT: The reason I asked for this status conference is because there are a great number of parties involved in the lawsuit. It is not just complex but certainly is a repetition of previous lawsuits or nearly so. I see most of the parties have opted out but I, nonetheless, will set a schedule for all motions to dismiss and/or summary judgment motions, a

time for responses. I think at this point all the motions have been filed. So the responses by the doctor will be due and then replies will be due, oral arguments will be scheduled. If the case survives the oral argument, at the time of oral argument I will set a schedule which will include the trial date.

MR. TYLER: Excuse me, Your Honor. I have a motion before the Court challenging the Court's jurisdiction. I submitted that motion.

THE COURT: I am treating that as one of the responses to the various motions that have been filed. It will be

EXHIBIT I

IN THE UNITED STATE DISTRICT COURT FOR THE DISTRICT OF OREGON DONALD E. TYLER, M.D., Plaintiff, v. HARTFORD INSURANCE GROUP, et al., Defendants. Case No. 86-854-RE

MOTION OF DEFENDANT HARTFORD INSURANCE FOR ATTORNEY FEES AND COSTS PURSUANT TO FRCP

11 (Oral Argument Requested)

Defendant, Hartford Insurance Group, respectfully moves the court for an order awarding Hartford Insurance Group its attorney fees and costs incurred in responding to Plaintiff's complaints and motions before this court. In support of its motion, Defendant, Hartford Insurance Group, relies upon FRCP 11, the attached Memorandum of Law and its exhibits and the complete record of this action.

DATED this 3rd day of October, 1986.

YTURRI, ROSE, BURNHAM, EBERT & BENTZ

By (signed) Teresa J. Hutchens, OSB #86047

EXHIBIT J

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON

DONALD E. TYLER, M.D., Plaintiff, vs. HARTFORD INSURANCE GROUP, et al., Defendants. No. 86-854-RE, Portland, Oregon February 6, 1987

TRANSCRIPT OF PROCEEDINGS BEFORE THE HONORABLE JAMES A REDDEN, Judge

APPEARANCES: For the Plaintiff: None, For the Defendants: Messrs. Kenneth E. Roberts, Martin W. Ja da, Thomas K. Elden, Walter Sweek, Ms. Teresa J. Hutchens, Judith Kobbervig. Court Reporter: Jerry C. Harris.

THE CLERK: We are trying to reach Dr. Tyler.

THE COURT: This is the case of Tyler versus Hartford Insurance Company, et al. Let the record show this is in response to the December 19, 1986 complaint of Dr. Tyler about the expense of traveling to Portland. We reset the hearing on motions to dismiss to Friday, February 6, 1987, at 9:00 o'clock a.m. All local counsel to appear in person, out-of-town counsel will be on a conference telephone call. We advised that we would initiate the conference call. We have called Dr.

Tyler's office in Ontario, Oregon and there was no answer and then there was a busy signal. We have not heard from him as to whether he would be on the phone or not. Why don't you try him once more and then we will proceed with or without him.

(Clerk dials number.)

THE COURT: The record should reflect that four attempts have been made to reach Dr. Tyler by phone pursuant to a notice sent out for the purpose of his appearance at this hearing; it was at his request and we agreed to allow him to appear by telephone rather than traveling to Portland. The matter before us, there are several motions by several defendants in this case. I intend to issue a written opinion. I will advise the parties present and by telephone in summary of my determination. First, let me ask counsel, those present, who you represent.

MR. ELDEN: This is Tom Elden, your Honor,

from the State of Oregon; I represent five former members of the Board of Medical Examiners, one of whom, for the record, is deceased. I have called that to Dr. Tyler's attention; he has left him in the case, as I recall. I am just trying to check through here and get the names.

THE COURT: I have the names. You have got Kostel, Ferrin, Reid, and Bobbitt.

MR. ELDEN: I thought there was fifth one, Judge. Let me just look. Kostol, Ferrin, Reid and Bobbitt; I guess that's it. I thought there was an additional one at some point.

THE COURT: In any event, they would all be members

MR. ELDEN: Former members. Actually, Mr. Bobbitt, in point of fact, I am not sure was actually a member of the board as such; he was an attorney working with the board back at that time. We didn't

address the claim on the basis of their role; we addressed it on the ground for dismissal.

THE COURT: Thank you. Others in the courtroom, identify yourselves and who your are representing.

MR. ROBERTS: Kenneth E. Roberts, representing Thomas 1. Roberts.

MS HUTCHENS: Teresa J. Hutchens, H-u-t-c-h-e-n-s, representing Hartford Insurance.

MS. KOBBERVIG: Judy Kobbervig, representing the three circuit and one district court judges; Judge Silverstein has never been served in this case.

MR. JAQUA: Martin Jaqua, representing Defendants Smith, Kelly, Bockman, Foote and, of course, all of the Colorado state judges, either trial or appellate judges. There is also some Colorado judges who have been named but not served. There is one who I believe is deceased.

MR. SWEEK: Walter Sweek. Your Honor, Fred

Roehr, my partner, represents Debbie Craig; he is in trial. I am standing in for him.

THE COURT: I have reviewed the filings such as they are from the parties. We met here in court with Dr. Tyler present, I believe, last October at which time I denied his motion to remand this case to state court and set a schedule for determination of all issues. I granted the doctor time to serve defendants not yet served if he chose to serve them. There has been no activity in the record since then. I will grant Defendant Roberts' motion to dismiss for lack of personal jurisdiction. I will grant Defendants Kostol, Ferrin, Reid and Bobbitt (state defendants) motion to dismiss; and if there is any other individuals who served on the board at that time included in the complaint and not mentioned, this order would cover that

individual as well. I grant the order to dismiss in its entirety because the claims against them are barred by the statute of limitations. In addition, the motion to dismiss is granted as to plaintiff's first claim for relief because plaintiff has failed to state a claim for interference with economic relationships. The motion to dismiss will be granted as to plaintiff's second claim for relief because plaintiff has failed to state a claim for intentional infliction of emotional distress. And the motion to dismiss will be granted as to plaintiff's third for relief because the claims of civil rights violations refer to events in Colorado and have no reference to the Oregon State defendants. Thirdly, I grant Hartford Insurance's motion to dismiss on the ground that it is barred by the applicable Oregon statute of limitations and because the Court lacks personal

jurisdiction over the defendant Hartford. In addition, the motion to dismiss is granted as to the first and third claims for relief because they fail to state a claim upon which relief can be granted as to this defendant. I do not think you need to reach Defendant Hartford's motion in the alternative to strike and make more definite and certain. Fourth, I grant Defendant Debbie Craig's motion to dismiss in its entirety based upon judicial immunity and plaintiff's failure to provide notice and file within the applicable statute of limitations. It is not necessary to reach this defendant's motion in the alternative for an order requiring a more definite statement. Five, I grant defendants Johnson, Danforth, Silverstein, Steinberg, Tursi, Van Cise, Jackabusi (sic) and Ericksen's (state judges and employees of the Colorado Judicial Department) motion to

withdraw appearance based on the fact that these defendants were never served with a summons, the original or amended complaint. Six, I grant defendants Smith, Kelly, Rulin, Rowen(sic) Bachman(sic), Foote and Vollack's (Colorado State judges) motion to dismiss for lack of personal jurisdiction, failure to comply with the tort claim notice requirement, failure to file within the applicable statute of limitations, and based on judicial immunity. Seven, I grant defendants Finesilver, Seth, McKay and Logan's (federal judges) motion for summary judgment based on judicial immunity. I dismiss as against those defendants who have not been served. Within this order I include the defendants who have filed motions to withdraw as well as those who have not. There is one other motion outstanding and that is Hartford's motion for sanctions. If you wish to

pursue that matter, you should again file a very brief motion drawing my attention to this earlier motion at which time I will set a hearing date which is necessary to impose sanction. Dr. Tyler needs to have the opportunity to be heard if you do intend to file a motion for sanctions. A detailed report of the attorney's time spent in federal court action should be included as a basis upon which I will base any sanction which I may or may not grant.

MR. ELDEN: Your Honor, this is Tom Elden. That is a clean sweep as to all of the defendants. Will Your Honor issue a judgment order of dismissal?

THE COURT: Yes.

MR. ELDEN: Thank you.

THE COURT: I will first issue an opinion. I don't know whether to issue a judgment or not. I will wait and see if there are any more motions for sanctions. We will

be in recess.

MR. ELDEN: Your Honor, you're going to put this in writing and will we get a copy?

THE COURT: Yes. (CONCLUDED)

I certify that the foregoing is a true and correct transcript of the record of proceedings in the above-entitled matter. February 13, 1987. (signed) JERRY C. HARRIS, Official Court Reporter.

EXHIBIT K

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON DONALD E. TYLER,M.D., Plaintiff, vs HARTFORD INSURANCE GROUP, et al., Defendants. Case No. 86-854-RE MOTION OF DEFENDANT HARTFORD INSURANCE FOR ATTORNEYS FEES AND COSTS PURSUANT TO FRCP 11 (Oral Argument Requested)

Defendant, Hartford Insurance Group, respectfully moves the court for an order awarding Hartford Insurance Group its

attorneys fees and costs incurred in responding to Plaintiff's complaints and motions before this court. In support of its motion, Defendant, Hartford Insurance Group, relies upon FRCP 11, the Motion and Memorandum of Law in Support of its Motion previously submitted to the Court by Defendant Hartford Insurance Group requesting its attorney fees and costs pursuant to FRCP 11, the exhibits attached to that Memorandum of Law, the complete record of this action, and the attached Statement of Attorney Fees and Costs and Cost Bill. DATED this 11th day of February, 1987. YTURRI, ROSE, BURNHAM, EBERT & BENTZ By (signed) Teresa J. Hutchens, OSB #86047 Trial attorney: Carl Burnham, Jr. OSB #64008

(Pages 3-13 of this EXHIBIT K because of volume and diluted value are omitted. They are detailed billings for costs and for 55.5 hours of Teresa J. Hutchens, 4.8

hours of Carl Burnham, and 2.8 hours of "legal assistants" for Hartford, totaling costs of $1,126.41 and attorney fees in the amount of $3,850.00. The only itemized time related to the petitioner's motion to remand, his only motion in federal court, (complaint and amended complaint were filed in state court) was on 8-8-86 "Review Rule 12 motions of other defendants and memorandum of Tyler in support of motion to remand--0.5 hours" of Hutchens).

EXHIBIT L,

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON DONALD E. TYLER, M.D., Plaintiff, v. HARTFORD INSURANCE GROUP, Sherman G. Finesilver, Oliver Seth, Monroe G. McKay, James K. Logan, William Ericksen, Donald P. Smith, Jr., A.M. Kelly, E.P. Van Cise, Judge Tursi, Edwin G. Ruland, Alan L. Sternberg, Harry S. Silverstein, Jr., Mac V. Danford, Philip

F. Roan, Harlan R. Bockman, Dean Johnson, Jean J. Jacobucci, Marvin W. Foote, Anthony F. Vollack, Stephen D. Dawson, Debbie Freepons Craig, Peter Pryor, Thomas L. Roberts, John Mott, Paul D. Renner, John R. Rodman, Frank R. Kennedy, Paul D. Cooper, Donald E. LaMora, Sherman and Howard Law Firm, Michael A. Williams, Kenneth B. Siegel, Ellen W. Reath, Roger F. Johnson, Robert Ruddy, Carl R. Kostol, M.D., Allan L. Ferrin, M.D., David E. Reid, D.O., and Howard I. Bobbit, Defendants. Civil No. 86-854-RE

OPINION REDDEN, Judge:

Plaintiff, who is a physician and attorney, brought this action against Hartford Insurance Group and 39 individuals for tortious interference with business relations, outrageous conduct and violation of 42 U.S.C. s 1983. The individual defendants include members of the Colorado judiciary presiding in all

levels of both state and federal courts, members of the medical staff of the Brighton Community Hospital, members of the Colorado Medical Society, the Colorado State Medical Examiners, the attorneys who represented these individuals in prior suits brought by Dr. Tyler in Colorado, four members of the Oregon Board of Medical Examiners and others.

The case was initially filed in Malheur County, Oregon. The United States removed the case to federal court on July 3, 1986 on behalf of a federal judge who had been served, defendant Finesilver, and other federal officers and employees who had not been served. Plaintiff filed a motion to remand the case to state court on August 8, 1986.

I denied plaintiff's motion to remand on October 17, 1986, and ordered that plaintiff had until November 17, 1986 to serve any defendants he wished to serve.

I also set a briefing schedule and date for oral arguments on the pending motions to dismiss as well as any motions to dismiss that might be filed by newly served defendants.

A minute order issued December 19, 1986 advised all parties that the hearing would be held on February 6, 1987 at 9:00 a.m. Plaintiff indicated that personal appearances were difficult for him due to distances involved. All local counsel were ordered to appear in person but, as a convenience to the parties and plaintiff, out of town counsel were allowed to appear by conference telephone call initiated from my courtroom.

At the time of the hearing plaintiff, who has represented himself throughout the case, failed to appear in person and could not be reached by telephone. My courtroom deputy called plaintiff's office in Ontario, Oregon four times at the phone

number he provided but was unable to reach him. Plaintiff did not contact the court before, during or after that date.

I ruled on the seven (7) motions before me granting the various defendants' motions as discussed below.

Defendant Roberts' Motion to Dismiss

Mr. Roberts is a Colorado attorney who was defense counsel in two cases brought by plaintiff in Colorado. Plaintiff's cases all stem from the failure to renew his hospital privileges at the Brighton Community Hospital in Brighton, Colorado approximately twelve years ago. Plaintiff has alleged in the instant action that Mr. Roberts acted pursuant to a conspiracy by supplying the Colorado Board of Medical Examiners deceitful, false information concerning plaintiff. Mr. Roberts moves to dismiss the claims against him on the ground that the court lacks jurisdiction over him. I grant the motion for lack of

personal jurisdiction pursuant to Rule 4 of the Oregon Rules of Civil Procedure.

State Defendants' Rule 12 Motion to Dismiss The state defendants are Carl Kostol, Allan Ferrin, David Reid and Howard Bobbitt. They were members of the Oregon Board of Medical Examiners. The claim against these defendants has to do with letters that plaintiff wrote to the Board in 1986 inquiring about letters dated September and October 1965 that were addressed to plaintiff. The substance of the letters had to do with plaintiff's application for reinstatement of his medical license to active status. The state defendants move to dismiss on the basis that any claims plaintiff has which stem from the 1965 letters are time barred. O.R.S. 30.275(8) provides that an action arising from any act or omission of a public body or an officer, employe (sic) or agent of a public body shall be

commenced within two years after the alleged loss or injury. I grant the state defendants' motion to dismiss in its entirety because the claims against them are barred by the statute of limitations. In addition, the motion is granted as to plaintiff's first claim for relief because plaintiff has failed to state a claim for interference with economic relationships and to plaintiff's second claim for relief because plaintiff has failed to state a claim for intentional infliction of emotional distress. Moreover, the motion is granted as to plaintiff's third claim for relief because the claims of civil rights violations refer to events in Colorado and have no reference to the Oregon state defendants.

Defendant Hartford Insurance's Motion to Dismiss, Strike and Make More Definite and Certain Defendant Hartford was plaintiff's malpractice insurance carrier

in Colorado. Plaintiff's professional conduct as a physician was apparently questioned and reviewed by a hospital review committee at Brighton Community Hospital. Plaintiff reportedly refused to cooperate with these reviews and consequently his liability insurance coverage was cancelled. Defendant Hartford moves for dismissal on four alternative theories and also moves to strike or make more definite and certain. I need not reach the motions to strike and make more definite and certain and grant the motion to dismiss on the following grounds. First, personal jurisdiction is lacking under Rule 4 of the Oregon Rules of Civil Procedure. Defendant Hartford has had no contact with Oregon which is relevant to the cause of action. Second, the complaint is barred by the statute of limitations. O.R.S. 12.110(1), O.R.S. 659.045(1) and O.R.S. 12.115(1). Third,

the motion to dismiss is granted as to the first and third claims for relief because they fail to state a claim upon which relief can be granted as to this defendant.

Defendant Debbie Freepons Craig's Motion to Dismiss or Make More Definite and Certain Ms. Craig was law clerk to Judge Ruland of the Colorado Court of Appeals. All claims brought against her in this case arise out of actions which allegedly occurred by virtue of this employment. I grant Ms. Craig's motion to dismiss in its entirety based upon judicial immunity and plaintiff's failure to provide notice and file within the applicable statute of limitations. It is not necessary for me to reach this defendant's motion in the alternative for an order requiring a more definite statement.

Defendants Johnson, Danforth, Silverstein, Steinberg, Tursi, Van Cise, Jacobucci and

Ericksen's Motion to Withdraw Appearance

These defendants were not served with any summons or pleading. Attorneys for these defendants were retained to represent judges and other current and former employees of the Colorado Judicial department. The attorneys submitted a motion to dismiss on behalf of all of their clients when the case was still in state court. They then learned that the case had been removed to federal court and moved for an extension of time within which to respond to the amended complaint which had just been filed. They indicate that they were uncertain at that time which defendants had actually been served with the amended complaint. The defendants who now move to withdraw appearance have never been served with a summons, original complaint or amended complaint. Defendant Jean Jacobucci is deceased. I grant the motion to withdraw

as to these defendants. Plaintiff was served with the motion to withdraw on August 4, 1986, and still has not served these defendants. I find the defendants should not be considered to have waived their defense of insufficiency of service of summons and grant the motion to withdraw their prior appearance.

Defendants Smith, Kelly, Ruland, Roan, Bockman, Foote and Vollack's Motion to Dismiss These defendants are all Colorado state judges. They move for dismissal for lack of personal jurisdiction, failure to comply with the tort claim notice requirement, judicial immunity and failure to file within the applicable statute of limitations.

I find that personal jurisdiction is not conferred by any of the provisions of Rule 4 of the Oregon Rules of Civil Procedure as to these defendants. Moreover, plaintiff has not alleged compliance with

the notice provisions of the Colorado Governmental Immunity Act. I grant dismissal on this ground as to plaintiff's first and second claims for relief. Dismissal is also granted on the ground that these defendants have a right to immunity from civil suit. The defendants' acts occurred as judicial officers of the State of Colorado and the defendants were hearing matters within their jurisdiction. The motion to dismiss is also granted because the action has not been brought within the applicable statute of limitations. Dr. Tyler alleges that he has been damaged as a result of a conspiracy beginning in 1974 and the claim was commenced in 1986. it is barred by Oregon, Colorado and federal statutes of limitations, whichever is applicable.

The motion to dismiss as to these defendants is granted in its entirety.

Defendant Federal Judges Finesilver, Seth,

McKay, and Logan's Motion for Summary Judgment Judge Finesilver is a federal district court judge and the other three named defendants here are appellate judges from the Tenth Circuit. Dr. Tyler claims these four judges illegally deprived him of his rights in an earlier case litigated in the Tenth Circuit. The judges invoke the doctrine of judicial immunity to support their motion for summary judgment. The judges were exercising their proper jurisdictional authority when ruling on plaintiff's case and are therefore immune from civil suit for damages. Judges are immune from civil liability unless their actions are "in the clear absence of all jurisdiction." Stump v. Sparkman, 435 U.S. 349, 356-7 (1978). These judges meet the Stump standard by showing that they performed acts which they normally perform while in their capacity as United States District and Circuit Judges. Id.,

at 362. I grant the federal judges' motion for summary judgment based on judicial immunity.

Conclusion

I grant all of the defendants' motions to dismiss and for summary judgment as discussed above. In addition, I dismiss this action as against those defendants who have not been served. Within this order I include the defendants who have filed motions to withdraw as well as those who have not. This action is dismissed accordingly.

Dated this 4 day of March, 1987.

(signed) James A. Redden

United States District Judge

EXHIBIT M

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON, DONALD E. TYLER,M.D., Plaintiff v. HARTFORD INSURANCE GROUP, Sherman G.Finesilver, Oliver Seth, Monroe G. McKay, James K.

Logan, William Ericksen, Donald P. Smith, Jr., A.M. Kelly, E.P. VanCise, Judge Tursi, Edwin G. Ruland, Alan L. Sternberg, Harry S. Silverstein, Jr., Mac V. Danford, Philip F. Roan, Harlan R. Bockman, Dean Johnson, Jean J. Jacobucci, Marvin W. Foote, Anthony F. Vollack, Stephen D. Dawson, Debbie Freepons Craig, Peter Pryor, Thomas L. Roberts, John Mott, Paul D. Renner, John R. Rodman, Frank R. Kennedy, Paul D. Cooper, Donald E. La Mora, Sherman and Howard Law Firm, Michael A. Williams, Kenneth B. Siegel, Ellen W. Reath, Roger F. Johnson, Robert Ruddy, Carl R. Kostol, M.D., Allan L. Ferrin, M.D., David E. Reid, D.O., and Howard I. Bobbitt, Defendants. Civil No. 86-854-RE ORDER REDDEN, Judge: IT IS ORDERED THAT: 1) Defendant Roberts'Motion to Dismiss is GRANTED; 2) Defendants Kostol, Ferrin, Reid and Bobbitt;s Motion to dismiss is GRANTED; 3) Defendant Hartford Insurance's

Motion to Dismiss is GRANTED; 4) Defendant Debbie Freepons Craig's Motion to Dismiss is GRANTED; 5) Defendants Johnson, Danford, Silverstein, Tursi, Van Cise, Jacobucci and Ericksen's Motion to Withdraw Appearance is GRANTED; 6) Defendants Smith, Kelly, Ruland, Roan, Bockman, Foote and Vollack's Motion to Dismiss is GRANTED; and, 7) Defendants Finesilver, Seth, McKay and Logan's Motion for Summary Judgment is GRANTED.

IT IS ALSO ORDERED that this action is DISMISSED. IT IS FURTHER ORDERED that this action is DISMISSED as against those Defendants who have not been served.

Dated this 4 day of March, 1987.

(signed) James A. Redden

United States District Judge

EXHIBIT N

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON DONALD E. TYLER, M.D. Plaintiff, v. HARTFORD INSURANCE

GROUP, et al., Defendants. Civil No. 86-854-RE JUDGMENT

Based on the record. IT IS ORDERED that plaintiff take nothing and the action is dismissed on the merits. Dated this 9 day of March, 1987.

(signed--illegible) Clerk, United States District Court

EXHIBIT O

(This is a copy of 28 USCS s. 1442.)

EXHIBIT P

DEPARTMENT OF JUSTICE, TRIAL DIVISION, Justice Building, Salem, Oregon 97310, March 16, 1987

The Honorable Francisco J. Yraguen
Circuit Court Judge, Malheur County
Courthouse, Drawer L, Vale, Oregon 97918

Re: Tyler v. Hartford Malheur County Circuit Court Case No. 86-06-20969-L

Dear Judge Yraguen:

On March 9, 1987, a judgment was entered in the above entitled case that

had been removed to federal district court (Civil No. 86-854-RE) ordering the plaintiff take nothing and the action be dismissed on its merits. I assume that the court will do whatever is necessary to close out the file in Malheur County inasmuch as the matter having been removed and dismissed, there would be nothing left to accomplish in Malheur County. If the court wishes any of the counsel to draft any sort of order, please let us know. Sincerely, (signed) Thomas K. Elden Assistant Attorney General (Certified to be a true and correct copy of the original Pamela J. Barton, trial court clerk by (signed Evelyn Sword) 4-6-87

EXHIBIT Q

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR THE COUNTY OF MALHEUR DONALD E. TYLER, M.D., Plaintiff, vs. HARTFORD INSURANCE GROUP, et al., Defendants. Case No. 86-06-20969-L

ORDER OF DISMISSAL

The above-entitled matter having come before the Court upon receipt of a letter from Thomas K. Elden, Assistant Attorney General, dated March 16th, 1987, indicating that on March 9th, 1987, a judgment was entered in the above-entitled case in Federal District Court, Civil No. 86-854-RE, ordering that the Plaintiff take nothing and the action be dismissed on its merits, and it appearing to the Court that the above-entitled case should be dismissed based on such judgment being entered in the Federal District Court; and the Court being fully advised in the premises NOW, THEREFORE IT IS HEREBY ORDERED that the above-entitled matter be, and it is hereby, dismissed. DONE AND DATED this 22nd day of March, 1987 (signed) F.J. Yraguen CIRCUIT JUDGE (certified to be a true and correct copy of the original Pamela J. Barton, trial

court clerk by (signed) Evelyn Sword)

EXHIBIT R

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON DONALD E. TYLER, M.D., Plaintiff, v. HARTFORD INSURANCE GROUP, Sherman G. Finesilver, Oliver Seth, Monroe G. McKay, James K. Logan, William Ericksen, Donald P. Smith, Jr., A.M. Kelly, E.P. Van Cise, Judge Tursi, Edwin G. Ruland, Alan L. Sternberg, Harry S. Silverstein, Jr., Mac V. Danford, Philip F. Roan, Harlan R. Bockman, Dean Johnson, Jean J. Jacobucci, Marvin W. Foote, Anthony F. Vollack, Stephen D. Dawson, Debbie Freepons Craig, Peter Pryor, Thomas L. Roberts, John Mott, Paul D. Renner, John R. Rodman, Frank R. Kennedy, Paul D. Cooper, Donald E. La Mora, Sherman and Howard Law Firm, Michael A. Williams, Kenneth B. Siegel, Ellen W. Reath, Roger F. Johnson, Robert Ruddy, Carl R. Kostol, M.D., Allan L. Ferrin, M.D., David E.

Reid, D.O., and Howard I. Bobbitt, Defendants. Civil No. 86-854-RE OPINION Donald E. Tyler, M.D., 1092 S.W. 2nd Avenue, Ontario, Oregon 97914 Plaintiff pro se. Teresa J. Hutchens, Yturri, Rose, Burnham, Ebert & Bentz, P.O. Box S, 89 S.W. Third Avenue, Ontario, Oregon 97914, Attorneys for Defendant Hartford Insurance REDDEN, Judge:

Plaintiff, who is a physician and an attorney, brought this action against Hartford Insurance Group and 39 individuals for tortious interference with business relations, outrageous conduct and violation of 42 U.S.C. s.1983. The individual defendants include members of the Colorado judiciary presiding in all levels of both state and federal courts, members of the Colorado Medical Society, the Colorado State Medical Examiners, the attorneys who represented these individuals in prior suits brought by Dr.

Tyler in Colorado, four members of the Oregon Board of Medical Examiners and others. It is plaintiff's contention that the defendants conspired over the last 20 years to interfere with his practice of medicine and to frustrate his efforts to seek recourse in the Colorado courts.

The case was initially filed in state court but removed to federal court on July 3, 1986. Plaintiff's motion for remand was denied on October 17, 1986, and at that time I advised plaintiff he would have until November 17, 1986 to serve any defendants he wished to bring into this action. I also set a briefing schedule and date for oral arguments on the already numerous pending motions to dismiss as well as any motions to dismiss that might be filed by newly served defendants. A hearing on the motions to dismiss was held on February 6, 1987. All local counsel were ordered to appear in person but, as a

convenience to the parties and plaintiff, out of town counsel and plaintiff were allowed to appear by telephone conference call initiated from the courtroom. At the time of the hearing, plaintiff, who has represented himself throughout the case, failed to appear in person and could not be reached by telephone. After several attempts to reach plaintiff at the phone number provided by him, I proceeded. I granted all of the defendants' motions to dismiss and for summary judgment. In addition, I dismissed the action as against those defendants who had not been served. See Opinion dated March 4, 1987. Those rulings were the obvious result of the motions filed, and plaintiff's appearance, or lack thereof, did not affect the outcome. Prior to the hearing on the motions to dismiss and for summary judgment, Hartford Insurance had filed a motion for attorney's fees and costs

pursuant to Fed.R.Civ.P. 11. I determined that I would postpone ruling on the motion until after the hearing and set a time for argument on the motion for March 26, 1987. The motion was originally filed on October 14, 986, and a Statement of Costs and Disbursements was filed on February 17, 1987. No response has been filed by plaintiff to the motion or to the statement of costs.

STANDARD FED.R.CIV.P. 11 provides in pertinent part:

Every pleading, motion, and other paper of a party represented by an attorney shall be signed by at least one attorney of record. . . A party who is not represented by an attorney shall sign his pleading, motion, or other paper and state his address. . . The signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion, or other paper; that to the best of his

knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. . . . If a pleading, motion, or other paper is signed in violation of this rule, the court . . . shall impose upon the person who signed it . . . an appropriate sanction, which may include an order to pay to the other party or parties the amount of reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee.

The Ninth Circuit has held that subjective bad faith is not an element to be proved under Rule 11. Zaldivar v. City

of Los Angeles, 780 F.2d 823, 829 (9th Cir. 1986). The standard is one of reasonableness and the "reasonable man" against which conduct is tested is a competent attorney admitted to practice before the district court. Id. at 830. The Ninth Circuit holds that sanctions shall be assessed if the paper filed in district court and signed by an attorney or an unrepresented party is frivolous, legally unreasonable, or without factual foundation, even though the paper was not filed in subjective bad faith. Id. at 831.

DISCUSSION The basis of defendant Hartford's motion for sanctions is that the complaint and motions filed by plaintiff in this action have been legally unreasonable and without factual foundation. This argument stems from the fact that plaintiff has brought virtually identical suits containing the same

allegations and regarding the same series of events numerous times in Colorado. In one of those suits, filed in United States District Court for the District of Colorado, the court noted with particularity the insufficiency of plaintiff's claim and the inadequacy of his pleading. Defendant has provided transcripts of proceedings in which plaintiff was warned that his redundant, immaterial, insufficient, and inarticulate pleading would not be tolerated. Judge Finesilver ultimately dismissed the matter and contained within his order of dismissal was the following. "The Complaint herein was virtually unintelligible and did not adequately advise defendants of the nature of the charges against them nor provide them with information sufficient to enable them to draft a responsive pleading . . . (The Court) gave the plaintiff an opportunity

to replead by filing an amended complaint which would meet the standards of FRCP 8(a). The Plaintiff has elected not to take advantage of this opportunity." Judge Finesilver's Order of Dismissal dated May 25, 1982 at p. 2.

Defendant contends that plaintiff has failed to heed the reprimands and warnings that resulted in the dismissal of the prior action and has once again brought suit against this defendant in a manner that does not comply with Fed.R.Civ.P. 8(a). The complaint in the instant action is also virtually unintelligible and contains claims and allegations virtually identical to those that were dismissed and stricken in the previous actions. The action is based on the same series of factual events which formed the basis of the prior lawsuits. The allegations contained in this complaint are, as were they in the prior lawsuits, barred by

applicable statutes of limitations as I noted in my Order of February 6, 1987. Plaintiff has again made a claim pursuant to 42 U.S.C. s.1983 without alleging facts indicating that the defendant acted under color of law. And, similar to past lawsuits, plaintiff's complaint and filings include references to unidentified parties, unnamed defendants, unrelated lawsuits and unanswered letters. Moreover, plaintiff continues to include disparaging remarks about the defendants and their counsel. While it is true that plaintiff is acting pro se, pro se plaintiffs are subject to sanctions imposed under Fed.R.Civ.P. 11. Here, the pro se plaintiff is an attorney. I find that plaintiff's pursuit of this lawsuit was and is legally unreasonable and that this lawsuit is without factual foundation. Further proof of the unreasonableness of plaintiff's conduct is

the fact that in virtually identical prior proceedings he has been advised of the insufficiency of his claims and pleading. He has been admonished as to pleading requirements contained within Fed.R.Civ.P. 8 and yet continues to file documents which are unintelligible. The fact that these filings force the defendant to once again appear and defend itself against meritless claims which are inarticulately framed supports the motion for sanctions. The costs to defendant of defending itself are awarded pursuant to Fed.R.Civ.P. 11.

CONCLUSION For the reasons stated, I grant defendant Hartford's motion for sanctions. Defendant is entitled to reasonable expenses, including attorney's fees. I find the defendant's statement of costs and disbursements to be reasonable and order plaintiff to pay attorney's fees and costs in the total amount of $4,976.41 ($1,126.41 in costs and $3,850.00 in

attorney's fees). Dated this 31 day of March, 1987. (signed) James A. Redden United States District Judge

EXHIBIT S

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON DONALD E. TYLER, M.D., V. HARTFORD INSURANCE GROUP, Sherman G. Finesilver, Oliver Seth, Monroe G. McKay, James K. Logan, William Ericksen, Donald P. Smith, Jr., A.M.Kelly, E.P. Van Cise, Judge Tursi, Edwin G. Ruland, Alan L. Sternberg, Harry S. Silverstein, Jr., Mac V. Danford, Philip F. Roan, Harlan R. Bockman, Dean Johnson, Jean J. Jacobucci, Marvin W. Foote, Anthony F. Vollack, Stephen D. Dawson, Debbie Freepons Craig, Peter Pryor, Thomas L. Roberts, John Mott, Paul D. Renner, John R. Rodman, Frank R. Kennedy, Paul D. Cooper, Donald E. LaMora, Sherman and Howard Law Firm, Michael A. Williams, Kenneth B. Siegel, Ellen W. Reath, Roger F. Johnson, Robert Ruddy,

Carl R. Kostol, M.D., Allan L. Ferrin, M.D., David E. Reid, D.O., and Howard I. Bobbit, Defendants. Civil No. 86-854-RE ORDER REDDEN, Judge: IT IS ORDERED that Defendant Hartford Insurance's Motion for Sanctions pursuant to Fed.R.Civ.P. 11 is GRANTED. Plaintiff is ordered to pay defendant's reasonable costs and attorney's fees in the total amount of $4,976.41. IT IS SO ORDERED. Dated this 31 day of March, 1987. (signed) James A. Redden United States District Judge

EXHIBIT T

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON DONALD E. TYLER, M.D., Plaintiff, v. HARTFORD INSURANCE GROUP, et al., Defendants. Civil No. 86-854-RE JUDGMENT

IT IS ORDERED that defendant Hartford Insurance Group recover the sum of $4,976.41 from plaintiff Donald E. Tyler, M.D., for costs and attorney fees. Dated

this day of April, 1987

(copy--not signed) Robert M. Christ, Clerk, United States District Court

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR THE COUNTY OF MALHEUR

DONALD E. TYLER, M.D., Plaintiff, vs HARTFORD INSURANCE GROUP, et al, Defendants. Circuit Court Case No. 87-04-21566M U S District Court District of Oregon Case No. 86-854-RE NOTICE OF FILING FOREIGN JUDGMENT

To: Donald E. Tyler, M.D., 1092 SW 2nd Avenue, Ontario, OR 97914

YOU SHALL TAKE NOTICE that on the 24th of April, 1987, the following Judgment, a copy of which is attached hereto marked Exhibit "A" and made a part hereof, was filed in the office of the Clerk of the Circuit Court of the State of Oregon for the County of Malheur: IT IS ORDERED that defendants Hartford Insurance Group recover the sum of $4,976.41 from

plaintiff Donald E. Tyler, M.D., for costs and attorney fees. Notice is further given of the following information: Name and Address of Judgment Creditor: HARTFORD INSURANCE GROUP, P O Box 8265, Boise, ID 83707 Name and Address of Judgment Creditor's Lawyers: YTURRI, ROSE, BURNHAM, EBERT & BENTZ, P.O. Box S, Ontario, OR 97914 Clerk of the Circuit Court By (signed--illegible) (Certified to be a true and correct copy of the original Pamela J. Barton, trial court clerk by (signed--illegible)

CONSTITUTIONS, STATUTES, RULES

U.S. CONSTITUTION

Amendment I : Congress shall make no law *** abridging the freedom of speech, or of the press; or the right *** to petition the Government for a redress of grievances.

Amendment XIV: Section 1. *** No State shall make or enforce any law which shall

abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; ***.

FEDERAL STATUTES 28 USC s. 1446

(a) A defendant or defendants desiring to remove any civil action or criminal prosecution from a State court shall file in the district court of the United States for the district and division within which such action is pending a verified petition containing a short and plain statement of the facts which entitle him or them to removal together with a copy of all process, pleadings and orders served upon him or them in such action.

(b) The petition for removal of a civil action or proceeding shall be filed within thirty days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting

forth the claim for relief upon which such action or proceeding is based, ***.

(d) Each petition for removal of a civil action or proceeding, except a petition in behalf of the United States, shall be accompanied by a bond with good and sufficient surety conditioned that the defendant or defendants will pay all costs and disbursements incurred by reason of the removal proceedings should it be determined that the case was not removable or was improperly removed.

(e) Promptly after the filing of such petition for the removal of a civil action and bond the defendant or defendants shall give written notice thereof to all adverse parties and shall file a copy of the petition with the clerk of such State court, which shall effect the removal and the State court shall proceed no further unless and until the case is remanded.

28 USC s. 1447 Procedure after removal

generally (a) In any case removed from a State court, the district court may issue all necessary orders and process to bring before it all proper parties whether served by process issued by the State court or otherwise. (b) It may require the petitioner to file with its clerk copies of all records and proceedings in such State court or may cause the same to be brought before it by writ of certiorari issued to such State court. *****

OREGON STATUTES

ORS 9.460 Duties of attorneys. An attorney shall: ***(3) Counsel or maintain such actions, suits or proceedings or defenses only as may appear to the attorney legal and just, except the defense of a person charged with a public offense; (4) Employ, for the purpose of maintaining the causes confided to the attorney, such means only as are consistent with truth, and never seek to

mislead the court or jury by any artifice or false statement of law or fact; (5) ***; (6) Abstain from all offensive personality, and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which the attorney is charged; ***.

ORS 14.260 Affidavit and motion for change of judge; time for making; limit of two changes of judge. *** No motion to disqualify a judge or a judge pro tem, assigned by the the Chief Justice of the Supreme Court to serve in a county other than the county in which the judge or judge pro tem resides, shall be filed more than five days after the party or attorney appearing in the cause-receives notice of the assignment. *** No party or attorney shall be permitted to make more than two applications in any cause, matter or proceeding under this section.

ORS 20.105: **Attorney fees where party disobeys court order or asserts claim in bad faith or for oppressive reasons.** (1) In any civil action, suit or other proceeding in a district court, a circuit court or the Oregon Tax Court, or in any civil appeal to or review by the Court of Appeals or Supreme Court, the court may, it its discretion, award reasonable attorney fees appropriate in the circumstances to a party against whom a claim, defense or ground for appeal or review is asserted, if that party is a prevailing party in the proceeding and to be paid by the party asserting the claim, defense or ground, upon a finding by the court that the party wilfully disobeyed a court order or acted in bad faith, wantonly or solely for oppressive reasons.

ORS 20.190 **Recovery of additional amounts as part of costs and disbursements.** A prevailing party in a

civil action or proceeding who has a right to recover costs and disbursements in the following cases also has a right to recover as a part of the costs and disbursements, the following additional amounts: (1) In the Supreme Court or Court of Appeals, on an appeal, $85. (2) In a circuit court or district court: (a) When judgment is given without trial of an issue of law or fact or on an appeal, $35; ***.

ORS 161.450 "Conspiracy" described. (1) A person is guilty of criminal conspiracy if with the intent that conduct constituting a crime punishable as a felony or a Class A misdemeanor be performed, the person agrees with one or more persons to engage in or cause the performance of such conduct. (2) Criminal conspiracy is a: (a) Class A felony if an object of the conspiracy is commission of murder, treason or a Class A felony. (b)

Class B felony is an object of the conspiracy is commission of a Class B felony. (c) Class C felony if an object of the conspiracy is commission of a Class C felony. (d) Class A misdemeanor if an object of the conspiracy is commission of a Class A misdemeanor.

ORS 162.065 Perjury. (1) A person commits the crime of perjury if the person makes a false sworn statement in regard to a material issue, knowing it to be false. (2) Perjury is a Class C felony.

ORS 162.085 Unsworn falsification. (1) A person commits the crime of unsworn falsification if the person knowingly makes any false written statement to a public servant in connection with an application for any benefit. (2) Unsworn falsification is a Class B misdemeanor.

ORS 162.235 Obstructing governmental or judicial administration. (1) A person commits the crime of obstructing

governmental or judicial administration if the person intentionally obstructs, impairs or hinders the administration of law or other governmental or judicial function by means of intimidation, force, physical or economic interference or obstacle. ***.(3) Obstructing governmental or judicial administration is a Class A Misdemeanor.

ORS 162.305 Tampering with public records. (1) A person commits the crime of tampering with public records if, without lawful authority, the person knowingly destroys, mutilates, conceals, removes, makes a false entry in or falsely alters any public record. (2) Tampering with public records is a Class A misdemeanor.

RACKETEERING

ORS 166.715 Definitions for ORS 166.715 to 166.735. As used in ORS 161.705 and 166.715 to 166.735, unless the context requires otherwise: ***

(2) "Enterprise" includes any individual, sole proprietorship, partnership, corporation, business trust or other profit or nonprofit legal entity, and includes any union, association or group of individuals associated in fact although not a legal entity, and both illicit and licit enterprises and governmental and nongovernmental entities.

(3) "Pattern of racketeering activity" means engaging in at least two incidents of racketeering conduct that have the same or similar intents, results, accomplices, victims or methods of commission or otherwise are interrelated by distinguishing characteristics, including a nexus to the same enterprise, and are not isolated incidents, provided at least one of such incidents occurred after November 1, 1981, and that the last of such incidents occurred within five years after a prior incident of racketeering

conduct.

(4) "Person" means any individual or entity capable of holding a legal or beneficial interest in real or personal property.

(5) "Racketeering activity" means to commit, to attempt to commit, to conspire to commit, or to solicit, coerce or intimidate another person to commit:

(a) Any conduct which constitutes a crime, as defined in ORS 161.515, under any of the following provisions of the Oregon Revised Statutes: ***,

(B) ORS 162.015, 162.025 and 162.065 to 162.085 relating to bribery and perjury;

(C) ORS 162.235, 162.265 to 162.305, 162.235, 162.335, 162.355 and 162.365, relating to obstructing governmental administration.

(D) ORS 162.405 to 162.425, relating to abuse of public office; ***.

ORS 166.720 Racketeering activity

unlawful; penalties. (1) It is unlawful for any person who has knowingly received any proceeds derived, directly or indirectly, from a pattern of racketeering activity or through the collection of an unlawful debt to use or invest, whether directly or indirectly, any part of such proceeds, or the proceeds derived from the investment or use thereof, in the acquisition of any title to, or any right, interest or equity in, real property or in the establishment or operation of any enterprise. (2) It is unlawful for any person, through a pattern of racketeering activity or through the collection of an unlawful debt, to acquire or maintain, directly or indirectly, any interest in or control of any real property or enterprise. (3) It is unlawful for any person employed by, or associated with, any enterprise to conduct or participate, directly or indirectly, in such enterprise

through a pattern of racketeering activity or the collection of an unlawful debt. (4) It is unlawful for any person to conspire or to endeavor to violate any of the provisions of subsections (1), (2) or (3) of this section. (5)(a) Any person convicted of engaging in activity in violation of the provisions of subsections (1) to (4) of this section is guilty of a Class A felony. ***** .

ORS 166.725 Remedies for violation of ORS 166.720; time limitation. *****
(7)(a) Any person who is injured by reason of any violation of the provisions of ORS 177.720 (1) to (4) shall have a cause of action for three-fold the actual damages sustained and, when appropriate, punitive damages. Such person shall also recover attorney fees in the trial and appellate courts and costs of investigation and litigation, reasonably incurred.
(b) The defendant or any injured person

may demand a trial by jury in any civil action brought pursuant to this section.

OREGON RULES OF CIVIL PROCEDURE

Summons Rule 7

***** D. Manner of service.

D.(1) *** Service may be made, subject to the restrictions and requirements of this rule, by the following methods: personal service of summons upon defendant or an agent of defendant authorized to receive process; substituted service by leaving a copy of summons and complaint at a person's dwelling house or usual place of abode; office service by leaving with a person who is apparently in charge of an office; service by mail; or, service by publication. *****.

SIGNATURE OF PLEADINGS RULE 17

(Section C added by amendment to be in effect Sept. 27, 1987)

A. Signing by party or attorney; certificate. Every pleading, motion and

other paper of a party represented by an attorney shall be signed by at least one attorney of record who is an active member of the Oregon State Bar. A party who is not represented by an attorney shall sign the pleading, motion or other paper and state the address of the party. Pleadings need not be verified or accompanied by affidavit. The signature constitutes a certificate that the person has read the pleading, motion or other paper, that to the best of the knowledge, information and belief of the person formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

B. Pleadings, motions and other papers not

signed. If a pleading, motion or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant.

C. Sanctions. If a pleading, motion or other paper is signed in violation of this rule, the court upon motion or upon its own initiative shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion or other paper, including a reasonable attorney fee.

RESPONSIVE PLEADINGS RULE 19

***** B. Affirmative defenses.

In a pleading to a preceding pleading, a party shall set forth affirmatively *** estoppel, *** res judicata *** and any

other matter constituting an avoidance or affirmative defense. ***.

DEFENSES AND OBJECTIONS; HOW PRESENTED; BY PLEADING OR MOTION; MOTION FOR JUDGMENT ON THE PLEADINGS RULE 21

A. How presented. Every defense, in law or fact, to a claim for relief in any pleading, whether a complaint, counterclaim, cross-claim or third party claim, shall be asserted in the responsive pleading thereto, except that the following defenses may at the option of the pleader be made by motion to dismiss: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) that there is another action pending between the same parties for the same cause, (4) that plaintiff has not the legal capacity to sue, (5) insufficiency of summons or process or insufficiency of service of summons or process; (6) that the party asserting the claim is not the

real party in interest, (7) failure to join a party under Rule 29, (8) failure to state ultimate facts sufficient to constitute a claim, and (9) that the pleading shows that the action has not been commenced within the time limited by statute. *** When a motion to dismiss has been granted, judgment shall be entered in favor of the moving party unless the court has given leave to file an amended pleading under Rule 25. ***.

AMENDED AND SUPPLEMENTAL PLEADINGS

RULE 23

A. Amendments. A pleading may be amended by a party once as a matter of course at any time before a responsive pleading is served or, ***. D. *** When any pleading is amended before trial *** it shall be done by filing a new pleading, **to be called the amended pleading**, or by interlineation, deletion, or otherwise.

DISMISSAL OF ACTIONS; COMPROMISE

RULE 54

A. VOLUNTARY DISMISSAL; EFFECT THEREOF.

*** A.(3) Costs and disbursements. When an action is dismissed under this section, the judgment may include any costs and disbursements, including attorney fees, provided by rule or statute. Unless the circumstances indicate otherwise, the prevailing party.

B. Involuntary dismissal. *****

DEFAULT RULE 69

***. The judgment entered by the clerk shall be for the amount due as shown by the affidavit, and may include costs and disbursements and attorney fees entered pursuant to Rule 68.

COSTS AND DISBURSEMENTS RULE 68

A. Definitions. As used in this rule:

*** A.(2) Costs and disbursements. "Costs and disbursements" are reasonable and necessary expenses incurred in the

prosecution or defense of an action other than for legal services, and include the fees of officers and witnesses; the expense of publication of summonses or notices, and the postage where the same are served by mail; the compensation of referees; the necessary expense of copying of any public record, book, or document used as evidence on the trial; a reasonable sum paid a person for executing any bond, recognizance, undertaking, stipulation, or other obligation therein; and any other expense specifically allowed by agreement, by these rules, or by other rule or statute. The expense of taking depositions shall not be allowed, even though the depositions are used at trial, except as otherwise provided by rule or statute.

B. Allowance of costs and disbursements. In any action, costs and disbursements shall be allowed to the prevailing party,

unless ***.

C. Award of and entry of judgment for attorney fees and costs and disbursements.

*** C.4(b) Objections. A party may object to the allowance of attorney fees and costs and disbursements or any part thereof as part of a judgment by filing and serving written objections to such statement, signed in accordance with Rule 17, not later than 15 days after the service of the statement of the amount of such items upon such party under paragraph (a) of this subsection. Objections shall be specific and may be founded in law or in fact and shall be deemed controverted without further pleading. ***.

C.(4)(c) Review by the court; hearing. Upon service and filing of timely objections, the court, without a jury, shall hear and determine all issues of law or fact raised by the statement and objections. Parties shall be given a

reasonable opportunity to present evidence and affidavits relevant to any factual issues.

C.(4)(d) Entry by court. After the hearing the court shall make a statement of the attorney fees and costs and disbursements allowed, which shall be entered as a part of the judgment. No other findings of fact or conclusions of law shall be necessary. ***.

OREGON RULES OF APPELLATE PROCEDURE

Rule 11.10 PETITION FOR ATTORNEY FEES

(1) No claim for attorney fees except as provided in Rule 11.11, will be allowed unless, within 21 days after the date of a decision, the party seeking fees serves and files a petition with proof of service *** supported by a statement of facts showing the authority relied on for claiming the fees and the attorney time involved showing the time devoted to each task, its reasonableness, the amount

claimed and the reasonableness of the amount claimed. *** (3) Objections to a petition for attorney fees shall be served and filed within 14 days from the date the petition is filed. *** (4) In the absence of duly filed objections to a petition under this rule, the Supreme Court and the Court of Appeals, respectively, will allow attorney fees in the amount sought in petition, except in cases in which (a) the entity from whom fees are sought was not a party to the proceeding; or (b) when the Supreme Court of the Court of Appeals is without authority to award fees.

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